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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

Number: 1074

TOM BROWN, et al,

Petitioners

VERSUS

RICHARD E. BROWN, JR., Administrator
DIVISION OF EMPLOYMENT SECURITY
DEPARTMENT OF LABOR
STATE OF LOUISIANA

AND

CROWN ZELLERBACH CORPORATION
Bogalusa Mill Division

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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INDEX

Prayer for Writ of Certiorari 1

Opinion Below 2

Jurisdictional Grounds 2

Questions Presented 3

Pertinent Constitutional Provisions and Statutes 3

Statement of the Case 4

Jurisdiction 4

Pleadings and Proceedings 4

Statement of Facts 5

Argument 7

Conclusion 9

Certificate of Service 10

APPENDIX

United States Code 28 ..... A1

Section 1257, Sub-sections 2 and 3 ..... A1

Applicable Portion of
Louisiana Unemployment Compensation Law A1
R.S. 23: 1629, 1630, 1634.

Decision of the Appeals Tribunal A4

Decision of the Board of Review A9

Judgment of the 22nd Judicial District Court A13

Reasons for Judgment A14

Opinion of the First Circuit Court of Appeals A16

Refusal of the Court of Appeal for Re-Hearing A22

Memorandum Opinion of the
Supreme Court of the State of Louisiana A23

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Tom Brown and three hundred and twenty-nine (329) other individuals, all residents of the State of Louisiana and members of the United Papermakers and Paperworkers, Local 189A, similarly situated, pray that a Writ of Certiorari issue from this Honorable Court to review the Judgment and Order of the Supreme Court of the State of Louisiana, hereinafter set out in Section A, below.

SECTION: A

OPINION BELOW

TOM BROWN, et al.

v.

RICHARD E. BROWN, JR., Administrator,
DIVISION OF EMPLOYMENT SECURITY,
Department of Labor
State of Louisiana

No. 47073.

Supreme Court of Louisiana

FEBRUARY 14, 1964.

In re: Tom Brown et al, applying for certiorari or writ of review to the Court of Appeal, First Circuit, Parish of Washington. 158 So. 2d 305. The application is denied. The judgment complained of is correct.

This opinion is reported as above, at 160 So. 2d. 227.

SECTION: B

JURISDICTIONAL GROUNDS:

1.) The Judgment sought to be reviewed is a "final Judgment" of the Supreme Court of the State of Louisiana, the highest Court of the State of Louisiana. A copy of said Judgment, is appended at: A13.

2.) No Petition for "Rehearing" is available and no order respecting a rehearing has been entered. No order granting any extension of time within which to petition for certiorari was sought or entered.

3.) This Court has jurisdiction to review the Judgment in question by Writ of Certiorari, under the provisions of 28 U.S.C.A. § 1257 (2) and (3).

4.) Jurisdiction of this Court is also invoked under the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States.

SECTION: C

QUESTIONS PRESENTED

1.) Is it necessary that an unemployment compensation claimant show facts which are unknown and unavailable to him at the time he makes his claim?

2.) Does the unemployment compensation law permit a claimant to perfect his claim after he has been denied his claim based on facts subsequently discovered but before the Board of Review has reached its decision?

3.) Where a claimant has no possibility of reaping any benefits whatsoever, because of his race, should the claimant be denied his right to make a claim because he belongs to the same International Union?

4.) Where a claimant is denied an opportunity to seek certain jobs, because of his race, would not his constitutional rights to equal protection and due process be violated when he is denied unemployment compensation benefits?

5.) Whether the majority union, based strictly on race, can enforce its will upon the minority, based strictly on race, just because they belong to the same International Union, in violation of the equal protection clause of the United States Constitution?

6.) Can the State of Louisiana, in administering the Unemployment Compensation Statutes, deny claimants their rights because of patterns of employment discrimination based solely on race?

7.) Can the State of Louisiana sanction racial discrimination in employment by denying benefits under the Unemployment Compensation Act, particularly where the United States government bears a major portion of the funds used to administer the Act?

SECTION: D

PERTINENT CONSTITUTIONAL PROVISIONS AND STATUTES

Because of the length of the provisions involved, their citation alone is set out at this point, and their pertinent text is set forth in the appendix.

1. The Constitution of the United States:
Amendment XIV§

2. United States Code: § 1257 (2) and (3).
§ 2101

3. Unemployment Compensation Law—State of Louisiana
R.S. 23—Chapter 11
Part VI.
§ 1629
§ 1630
§ 1634

SECTION: E

STATEMENT OF THE CASE

1.—Jurisdiction

Jurisdiction was vested in the 22nd. Judicial District Court for the Parish of Washington, State of Louisiana, under the provision of the Unemployment Compensation Law, State of Louisiana R.S. 23—Chapter 11 Part VI, otherwise referred to as L.S.A. 23 - 1634.

2.—Pleadings and Proceedings.

Tom Brown, and others, all of whom are members of Local 189-A of the United Papermakers and Paperworkers International Union, AFL-CIO, are the employees of the Crown-Zellerbach Corporation, Bogalusa Mill. As such, they applied for benefits under the Unemployment Compensation Statutes of Louisiana, on or about August 27, 1961, when production ceased at the said mill.

The local office made an initial determination disqualifying the claimants on the basis that the said claimants were unemployed because of a labor dispute. The claimants lodged an appeal, which was heard, and on December 1, 1961 the Appeals Referees affirmed the Agency determination, disqualifying the claimants for the duration of the labor dispute. The decision of the Appeals Referees was affirmed on February 2, 1962 by the Louisiana Board of Review. An appeal was taken to the 22nd Judicial District Court, for the Parish of Washington, and the Honorable F. S. Ellis, Judge, found no error.

An appeal was lodged under the provisions of L.S.A.R.S. 23. 1634, in the First Circuit Court of Appeal which affirmed the District Court.

The evidence adduced at the hearing before the Appeals Referees indicates that there are several unions recognized by the management of the Bogalusa Mill—Crown Zellerbach Corporation. The two largest are Local 189 and 189A, both of which are affiliates of the United Papermakers and Paperworkers International Union. As was concluded by the Appeals Referees, a labor dispute, involving Local 189 only, began on or about August 27, 1961. The labor dispute was approved, as to this Union only, by the International Union. As a direct result of the work stoppage by Local 189, the members of Local 189A became unemployed.

The International Union contacted the President of Local 189A and directed him to "take a strike vote." The vote was taken and the members of Local 189A voted not to strike. This fact was stipulated to.

After such delays as were necessary, the members of Local 189A filed for their benefits and were denied, on the grounds that the members of Local 189 and 189A had mutual interests in the strike.

At the hearing it was established that the two unions were separately chartered. It was established that they had separate officers. It was established that they met separately and that they were generally two separate unions, under one International Union.

The fact is that the International Union and the Company recognized two separate and distinct unions because they were established on racial lines. Local 189 is a bargaining unit for white workers only. Local 189A is a bargaining unit for Negro workers only. Local 189 bargains exclusively with respect to "white rights, duties, responsibilities and jobs" and Local 189A does the same for its Negro membership!

It subsequently developed, and evidence was tendered to the Board of Review, that the strike was called solely because of matters affecting the membership of Local 189 **only**. The fact that this matter was solely in the interest of Local 189 and had no advantage to Local 189A, has been completely ignored by all the Courts in Louisiana.

3.—Statement of Facts

The CROWN-ZELLERBACH CORPORATION operates a mill Division at Bogalusa, Louisiana. The mill is generally regarded as a "union mill." Whereas there are several unions represented there, there are two principal unions in the plant. There are Locals 189 and 189A of the United Papermakers and Paperworkers, A.F.L.-C.I.O.

On July 1, 1960, a labor agreement was reached and signed by: W. F. GILLESPIE, Resident Manager, for the Crown-Zellerbach Corporation, Bogalusa Mill; PAUL L. PHILLIPS, President and CLIFTON KING, International Representative, for the United Papermakers and Paperworkers, A.F.L.-C.I.O.; ARTHUR F. BASS, President, Recovery Local No. 189 and L. C. DAWSON, President, Recovery Local No. 189-A. It is under this agreement that the company and union was operating at the time that a labor dispute arose.

Local 189 is composed of all "white" trade unionists, while Local 189A is composed of all "Negro" trade unionists. Each respects the fact that they are completely autonomous. Each has jurisdiction over separate and distinct job classification in the plant and at the time of the difficulties, there was an unwritten "law", recognized by both the company and the unions, that white unionists would not be employed on jobs reserved for Negroes and Negroes could not be employed on jobs held by white persons.

The two unions hold separate meetings, elect their own respective officers, pay dues separately, remit national assessments separately, maintain separate union halls and have separate charters.

In the early summer of 1961, Local 189 complained to the company about certain working conditions. This information came to the knowledge of Local 189A several months after the strike began. It appears that Local 189 was not satisfied with the manner in which the company hired "maintenance men" (skilled employees); all of whom are by tradition white persons, not members of the union and certainly not members of Local 189-A, because of their race. The problem was not resolved and Local 189 applied to the International Union for permission to strike. The International authorized them to take a strike vote and they voted over-whelmingly to go on strike. The International Union then directed the officers of Local 189-A to take a strike vote. The vote was almost unanimous—NOT TO STRIKE.

When Local 189 went out on strike, they effectively closed down the plant because members of Local 189A assist the machine operators, etc and when the machines do not operate, there is no work for members of 189-A.

The members of 189-A applied for unemployment compensation. The Local office, at Bogalusa, made a determination and denied them benefits on the basis that they were unemployed because of a "labor dispute."

A formal hearing was scheduled before the Appeals

Tribunal of the Division of Employment Security. At the Hearing it was stipulated that the members of Local 189A were unemployed because of a "labor dispute". It was further stipulated that Local 189A had taken a strike vote and had voted **not to strike.**

The Appeals Tribunal found that the two unions were in effect one and the same union and that they would jointly profit by the strike and therefore Local 189A had an interest in the labor dispute.

Local 189A then, timely, filed for a review by the Board of Review, Louisiana Division of Employment Security. However, before a decision was reached the members of Local 189 published for the very first time their reasons for going on strike, which said publication, (in the form of a letter), was tendered to the Board of Review. The Board of Review was asked to either accept the document as "proof" that Local 189A had no interest in the strike, or to remand the case to the Appeals Tribunal for further evidence on this point. The Board refused.

A petition was then filed with the 22nd Judicial District Court for the Parish of Washington. The Honorable Court affirmed, with written reasons, the decision of the Board of Review.

An appeal was taken to the First Circuit Court of Appeals and the decision of the District Court was **affirmed.**

The Supreme Court of the State of Louisiana refused to grant Certiorari, stating very conclusively that the decision was correct.

F

ARGUMENT

All of the parties hereto admit that the International Representative contacted Tom Brown, President of Local 189A, and requested that Local 189A "take a strike vote". This was done. The results were known to everyone. Local 189A voted not to strike. If Local 189 and Local 189A were one and the same union, it would not have been necessary to ask Local 189A to take a strike vote since the larger of the two unions had already taken a strike vote and had voted to strike. All of the parties know that Local 189 had more than three times as many members as Local 189A. If Local 189A could not in fact decide whether to strike or refrain from striking, it would have been useless for them to take any vote.

There are numerous other factors which indicate clearly that these two unions are separate and distinct bargaining units. Not the the least of which are the facts: that they have separate memberships; they report directly to the International Union and the International Union makes direct contact with them, with or without the knowledge or consent of the other; they maintain separate headquarters or halls; they and each of them sign agreements or contracts for their separate unions.

Much is made of the fact that the Labor Agreement called Local 189 and 189A, the "union". A careful scrutiny of the contract will show clearly that "the union" was in fact three entities, and not just the two Local Unions.

It is obvious that any one of these entities could have declined to sign the Agreement. The fact that they did not choose to decline on this occasion does not necessarily mean that they were one and that they were irrevocably tied together for any and all purposes.

Not one bit of evidence has been introduced to show the participation of Local 189A. How does one participate in a strike? Universally, one must decide in some formal or informal manner to "strike". As in this instance, and in most, the International Union must approve the strike. Strikers are usually compelled to walk picket lines, and they look to their International bodies for direction and assistance. Local 189A had none of this. They decided not to strike.

Not one bit of evidence was introduced to show any actual or implied interest of Local 189A. When the true facts were revealed, it was clear that only members of Local 189 could have any interest whatsoever in the strike. The sole and only question, it was later learned, was whether the company could determine who should be hired as maintenance workers. These workers were by custom, practice and policy—**white workers.** These persons could never infringe upon the rights of members of Local 189A. The exclusion or admission to employment of these workers would affect Local 189 **only.** It would make no difference whatsoever to members of Local 189A. Perhaps Local 189A would like to have participated in this strike, but they were powerless. Both the company and Local 189 knew this.

As was urged below, all of the parties to this action were fully aware of the fact that there was at least one other union at Crown Zellerbach Corporation at the time of this strike. The members of this union were permitted to qualify for unemployment compensation benefits. This, in spite of the fact that they could very well benefit from the strike or be affected by its outcome.

We are fully aware of the jurisprudence which exists in other states which indicate that where "sister-unions" operate in a given plant, one will not be permitted to strike while the other collects benefits. We agree with these findings. We respectfully suggest and urge that in every instance, the appropriate tribunal has examined carefully into the objectives of the strike. These august bodies have noted that where there are "benefits to be obtained" not merely for the strikers, but for the non-striker as well, no unemployment compensation is allowed, and rightly so. But where it is clearly shown that one group of employees has no interest whatsoever, and as a matter of fact were specifically excluded by virtue of the union to which they belonged, with the tacit approval of the International Union, Local 189 and the company, then those persons ought not be so excluded from the benefits which are rightfully theirs.

We respectfully urge that the doctrines laid down in the Steele Case[1] and in the Tunstall Case[2] are just as applicable to this case. If this decision was allowed to stand, the State of Louisiana could enforce a system of discriminatory patterns of employment, all contrary to the Constitution of the United States.

We think this Court should take particular note of the fact that whereas the State of Louisiana is primarily responsible for the Unemployment Compensation Act, in Louisiana, the federal treasury provides most of the funds necessary to administer the Act.

As is well pointed out by the First Circuit Court of Appeal, there is no law on this subject in Louisiana. However there is always the conscience of the Courts, so nobly expressed by Mr. Justice Murphy: "The Constitution voices its disapproval whenever economic discrimination is applied under authority of Law, against any race, creed or color. A sound democracy cannot allow such discrimination to go unchallenged. Racism is far too virulent today to permit the slightest refusal, in the light of a Constitution that abhors it, to expose and condemn it wherever it appears in the course of statutory interpretation."

CONCLUSION

It is respectfully submitted that the Board of Review could not ignore the facts as presented at the hearing. It was

1—Steele v. Louisville and Nashville RR Co.—323 U.S. 192
65 S. Ct. 226

2—Tunstall v. Brotherhood of Locomotive Firemen—323 U.S. 210
65 S. Ct. 235

clearly shown that Local 189A had a right and a duty to determine whether they desired to participate in a strike against their employer. As a matter of fact, it is difficult to appreciate fully an employer, who finds that its employees have announced their unwillingness to take action contrary to the interests of the employer, who would wish to see those local employees declared to be on strike.

This Honorable Court should grant this request for a Writ of Certiorari, and in due course, the decision of the Supreme Court should be over-turned and the Division of Employment Security should be ordered to pay to the claimants all of the funds to which they are entitled.

CERTIFICATE OF SERVICE

I, the undersigned, REVIUS O. ORTIQUE, JR., Counsel for Petitioners, certify that a true copy of the foregoing Petition for Writ of Certiorari to the Supreme Court of the State of Louisiana has been mailed, postage pre-paid to: Mr. Marion Weimer, Attorney for the Administrator of the Division of Employment Security, Capitol Annex, State of Louisiana, Baton Rouge, Louisiana, and to Mr. Bascom D. Talley, Jr., Talley, Anthony, Hughes and Knight, 382 Columbia Street, Bogalusa, Louisiana, Attorneys of record, in accordance with the rules of this Court.

This 2nd day of May, 1964.

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APPENDIX

UNITED STATES CODE: 28

§ 1257 . . . .

Final Judgments on decrees rendered by the highest Court of a State in which a decision could be had, may be reviewed by the Supreme Court, as follows:

(2) By appeal, where is drawn in question the validity of a statute of any state on the grounds of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity;

(3) By Writ of Certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set-up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

Fourteenth Amendment.

Constitution of the United States

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

State of Louisiana

Unemployment Compensation Law

R.S. 23: 1629

Ch. 11

§ 1629. Appeals to appeal tribunals; time for filing; notice of decision.

The claimant or any other party entitled to notice of a determination may file an appeal from such determination with an appeal tribunal within seven days after the date notification was given or was mailed to his last known address.

Unless the appeal is withdrawn with its permission or is removed to the board of review, the appeal tribunal, after affording the parties reasonable opportunity for a fair hearing, shall make findings and conclusions and on the basis

thereof affirm, modify, or reverse the determination. Whenever an appeal involves a question as to whether services were performed by a claimant in employment or for an employer, the tribunal shall give special notice of such issue and of the pendency of the appeal to the employing unit and to the administrator, both of whom shall be parties to the proceeding and be afforded a reasonable opportunity to adduce evidence bearing on such question.

The parties shall be duly notified of the tribunal's decision and of the findings and conclusions in support thereof and such decision shall be final unless further review is initiated pursuant to R.S. 23: 1630.

§ 1630. Review of decision by board of review; notice of board's decision

The board of review may on its own motion, within ten days after the date of notification or of mailing of a decision of an appeal tribunal, initiate a review of such decision or allow an appeal to be filed by any party entitled to notice of such decision. An appeal filed by any such party shall be allowed as of right if such decision was not unanimous, or, if the determination was not affirmed by the appeal tribunal. Upon review on its own motion or upon appeal, the board of review may, on the basis of the evidence previously submitted in such case, or upon the basis of such additional evidence as it may direct be taken, affirm, modify or reverse the findings and conclusions of the appeal tribunal. The board of review may remove to itself or transfer to another appeal tribunal the proceedings on any claims pending before an appeal tribunal. Any proceedings, so removed to the board of review prior to the completion of a fair hearing shall be heard by the board of review in accordance with the requirements of this subsection with respect to proceedings before an appeal tribunal. The board of review, shall promptly notify the parties of its decision, including its findngs and conclusions in support thereof, and such decision shall be final unless within ten days after the mailing of notice thereof to the party's last known address, or in the absence of such mailing, within ten days after the delivery of such notice, a proceeding for judicial review is initiated pursuant to R.S. 23: 1634. Provided, that upon denial by the board of review of an application for appeal from the decision of an appeal tribunal, the decision of the appeal tribunal shall be deemed to be a decision of the board of review within the meaning of this Section for purposes of judicial review and shall be subject to judicial review within the time and in the manner provided for with respect to decision of the board of review, except that the time for initiating such review shall run from the date of notice of the order of the board of review denying the application for appeal.

§ 1634: Judicial Review: Procedure

Within the time specified in R.S. 23: 1630, the administrator, or any party to the proceedings before the board of review, may obtain judicial review thereof by filing in the district court of the domicile of the claimant a petition for review of the decision and in such proceeding any other party to the proceeding before the board of review shall be made a party defendant. The Petition for review need not be verified but shall state the grounds upon which such review is sought. The administrator shall be deemed to be a party to any such proceeding. If the administrator is a party defendant, the petition shall be served upon him by leaving with him, or such representative as he may have designated for that purpose, as many copies of the petition as there are defendants. With his answer or petition, the administrator shall certify and file with the court a certified copy of the record of the case, including all documents and papers and a transcript of all testimony taken in the matter, together with the board of review's findings, conclusions, and decision. Upon the filing of a petition for review by the administrator or upon the service of the petition on him, the administrator shall forthwith send by registered mail to each other party to the proceeding a copy of the petition, and such mailing shall be deemed to be completed service upon all parties. In any proceeding under this Section the findings of the board of review as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law. No additional evidence shall be received by the court, but the court may order additional evidence to be taken before the board of review, and the board of review may, after hearing such additional evidence, modify its findings of fact or conclusions, and file such additional or modified findings and conclusions, together with a transcript of the additional record, with the court. Such proceedings shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workmen's compensation law of this state. An appeal may be taken from the decision of the district court to the circuit court of appeals in the same manner, but not inconsistent with the provisions of this Chapter, as is provided in civil cases. It shall not be necessary as a condition precedent to judicial review of any decision of the board of review to enter exceptions to the rulings of the board of review, and no bond shall be required as a condition of initiating a proceeding for a judicial review, or entering an appeal from the decision of the court upon such review. Upon the final termination of a judicial proceeding, the board of review shall enter an order in accordance with the mandate of the court.

STATE OF LOUISIANA

Appeals Tribunal

FOR THE

DIVISION OF EMPLOYMENT SECURITY

DEPARTMENT OF LABOR

BATON ROUGE, LOUISIANA

IN THE CASE OF:

TOM BROWN—Docket No. 1318-BR-61, (5794-AT-61)ET AL

(MEMBERS OF THE UNITED PAPERMAKERS AND

PAPERWORKERS LOCAL 189-A)

versus

RICHARD E. BROWN, JR., Administrator,

DIVISION OF EMPLOYMENT SECURITY

AND

BOGALUSA MILL DIVISION

CROWN-ZELLERBACH CORPORATION

ISSUES

Timeliness of Appeal—1629

Disqualification for Benefits—1601 (4)

FINDINGS OF FACT

The claimants, all of whom are members of The United Papermakers and Paperworkers, local 189-A, with some exceptions, were individually notified by mail on October 4, 1961, of their being disqualified from receiving unemployment benefits since the Agency found them to be unemployed as a result of a labor dispute in active progress at their last place of employment and to be participating in the dispute.

Prior to the mailing of the proper Notices of Claim Determination, the manager of the Agency's Bogalusa Local office, on the basis of a letter from Mr. George W. May, Jr. Director, Unemployment Insurances, Louisiana Division of Employment Security, informed officials of the Union, by letter, under date of September 19, 1961, that members of the Union were disqualified from the receipt of unemployment compensation. From this information the Union, under date of September 21, 1961, submitted a letter, on behalf of its membership, appealing from the Agency's determination. Said letter was received by the Bogalusa Local office on September 22, 1961. Subsequently, on October 4, 1961, the letter—after the date was altered in pen and ink, with the change apparently initialed by the signator—was submitted by the Bogalusa Local office manager to the Unemployment Insurance Director as an appeal.

A hearing was conducted at the Louisiana State Employment Office, Bogalusa, Louisiana, on October 25, 1961. Mr. Tom Brown, President, Local 189-A appeared as witness for all appellants. A stipulation was entered into that his testimony would apply to all appellants. Mr. Raleigh O. Lucas, Sr., Correspondent and Recording Secretary, also testified as a witness for the claimants. Mr. Revius O. Ortique, Jr., appeared as attorney for the claimants. The following claimants also attended the hearing: M. Allen, Anthony Hill, Clyde Horn, Julius R. Marshall, Sam Myles, Edward Peters, Howard Torrance, Rushell S. Franklin, and J. D. Godbolt. Mr. Bascom Talley, Attorney, represented the employer. Messrs. Jerry H. Bankston and Marion Weimer, Attorneys, represented the Administrator. Mr. Ralph S. Roussell, Manager Bogalusa Local Office, appeared as witness for the Agency. The hearing was conducted by Chief Referee Earl R. Weaver and Appeals Referee Henry J. Crayon.

The counsellor for the employer challenged the timeli-

ness of the appeal, as presented to the Appeals Tribunal, contending the appeal was submitted prior to proper and legal notification. The Bogalusa Local office manager acknowledged that he had erred in considering the letter of the Unemployment Insurance Director, as a determination and in his subsequent act of giving notification to the Union. He, or his representative, received the letter from the Union which was intended as an appeal also prior to the issuance of the regular determination of denial of benefits. With the realization that he was in error he did, on October 4, 1961, act to modify the effective date of the letter of appeal by having the Union official write, by hand, the date of October 4, 1961, upon the original letter of appeal. He then, again through error, submitted the appeal to the Unemployment Insurance Director, rather than direct to the Appeals Tribunal.

A labor dispute, involving United Papermakers and Paperworkers Union, Local 189 and captioned employer began on August 27, 1961. The strike was authorized by the International Union. Production ceased at the pulp and paper mill at the Bogalusa Division of Crown-Zellerbach Corporation. Picket lines were established. As a result of the work stoppage the claimants became unemployed. The claimants maintain that they did not call a strike vote and that they have been chartered as an individual Union, being designated as Local 189-A, and are independent of Local 189. The employer submitted in evidence the Labor Agreement between the Bogalusa Mill and United Papermakers and Paperworkers. The first paragraph, under the title **Agreement** reads as follows:

> "This Agreement made and entered into this the first day of July, 1960, by and between Crown-Zellerbach Corporation, Bogalusa Mill, Boglusa, Louisiana, hereinafter called the Company, and the United Papermakers and Paperworkers and its Locals No. 189 and 189-A, hereinfter called the Union."

Among others, the Agreement was signed by the Presidents of both Locals 189 and 189-A.

As a result of Local 189 going on strike the members of Local 189-A were also required to go on strike. Local 189-A did take a strike vote, however, the President of the Union testified in part as follows:

> Mr. Ortique: Are you as President of Local 189-A bound by strike action taken by any other union at Crown Zellerbach?
>
> Brown: Yes.

Mr. Ortique: If Local 189 is presently on strike, does Local 189 tell Local 189-A to go on strike?

Brown: No.

Mr. Ortique: Does the fact that Local 189 declare that they are on strike require that Local 189-A go on strike?

Brown: Yes.

Mr. Ortique: Did Local 189-A take a strike vote?

Brown: They did.

Mr. Ortique: What was the result of this vote?

Brown: We don't know.

When Local 189 called the strike the claimant and other members of Local 189-A did not report for work, contending that work was not available since their tasks were interdependent upon those performed by members of Local 189. Official recognition was given to the established picket lines by members of Local 189-A, and acknowledgment made that they are honor bound to respect said picket line. Furthermore, such respect was manifested when the members of Local 189-A first learned of the strike and refused to cross the picket line.

The International Union authorized strike benefits for members of Local 189-A on the same basis as was authorized for Local 189. A check for $5,400.00 for such benefits was sent to the President of Local 189-A. Said check was returned to the International Union with the contention that members of Local 189-A were not on strike. The national union headquarters acknowledged receipt of the returned check and advised Local 189-A that said funds would be held in escrow pending a decision regarding the claimants' eligibility for Unemployment Insurance.

OPINION

Section 1629 of the Louisiana Employment Security Law provides that claimant or any other party entitled to Notice of Determination may file an appeal from such determination with an Appeals Tribunal within seven days after the date notification was given or was mailed to his last known address.

The evidence in the instant case shows irregularities in the filing of this appeal. The irregularities, however, were of a technical, administration nature and clearly not the fault of the claimants or their Agent—the ...ion officials. To deny claimants their legislated rights would then be in error.

Section 1601 (4) of the Louisiana Employment Security Law provides that a claimant may be disqualified for any week with respect to which the Administrator finds that his unemployment is due to a labor dispute which is in active progress at the factory, establishment, or other premises at which he is or was last employed; but such disqualification shall not apply if it is shown to the satisfaction of the Administrator that he is not participating in or interested in the labor dispute which caused his unemployment.

It is evident that the claimants are unemployed as a result of a labor dispute which is in active progress at the premises of the captioned employer, and at which they are or were last employed. It is also quite evident, for several reasons, in spite of a separate charter, that the claimants' Union acts in unison with Local 189. Both Local 189—the aggressive Union in this dispute, and Local 189-A—the claimants' Union, have the same collective bargaining agreement. No matter which member of the Agreement takes the initiative to percipitate a labor dispute the other members must be considered as an interested party, **since they too will either gain or lose by the results of the ensuing negotiations.** The claimant's participation in the dispute is more dramatically demonstrated by their recognition of, and refusal to cross the picket line. Of added significance is the fact that the International Union, which body must give sanction to a strike, sent Local 189-A a check for "strike relief benefits."

IT IS ORDERED That the determination of the Agency be affirmed.

s/ Earle R. Weaver — s/ Henry J. Crayon

EARLE R. WEAVER
CHIEF APPEALS REFEREE

HENRY J. CRAYON
APPEALS REFEREE

DECISION MAILED: December 1, 1961

FURTHER APPEAL RIGHTS: This decision becomes final unless an appeal is filed with the Louisiana Board of Review within 10 days after the mailing date as shown on the face of this decision.

STATE OF LOUISIANA

Board of Review

FOR THE

DIVISION OF EMPLOYMENT SECURITY
DEPARTMENT OF LABOR
BATON ROUGE, LOUISIANA

IN THE CASE OF:

TOM BROWN—Docket No. 5794-AT-61 ET AL
(MEMBERS OF THE UNITED PAPERMAKERS AND
PAPERWORKERS LOCAL 189-A)

versus

RICHARD E. BROWN, JR., Administrator
DIVISION OF EMPLOYMENT SECURITY

AND

BOGALUSA MILL DIVISION
CROWN ZELLERBACH CORPORATION

1318-BR-61 (5794-AT-61) ET AL

DECISION

This matter came up on an appeal filed by the claimants through their Attorney, Revius O. Ortique, Jr., from a decision of the Appeals Referees, rendered and signed, December 1, 1961, on the various cases consolidated herein, all of which cases arose from a strike, or labor dispute, between the claimants and their employer, Crown Zellerbach Corporation, on or about August 27, 1961, which affirmed an Agency determination disqualifying the claimants for the duration of the labor dispute.

All of these cases involve Section 1601 (4) of the Louisiana Employment Security Law, which provides as follows:

"1601. Disqualification for benefits:

"An individual shall be disqualified for benefits:

"(4) For any week with respect to which the Administrator finds that his unemployment is due to a labor dispute which is in active progress at the factory, establishment, or other premises at which he is or was last employed; but such disqualification shall not apply if it is shown to the satisfaction of the Administrator that he is not participating in or interested in the labor dispute which caused his unemployment. For the purposes of this Sub-section, if separate branches of work which are commonly conducted as separate business, in separate premises, are conducted in separate departments of the same premises, each such department shall be deemed to be a separate factory, establishment or other premises."

The evidence establishes that all of the claimants are members of the United Papermakers and Paperworkers Union, Local 189-A. Tom Brown, President, Local 189-A, appeared as a witness for all appellants, as well as Raleigh O. Lucas, Sr., Correspondent and Recording Secretary. The claimants were represented by Revius O. Ortique, Jr., Attorney-at-Law. The employer was represented by Bascom D. Talley, Jr., Attorney-at-Law. The Agency was represented by Jerry Bankston and Marion Weimer, Attorneys-at-Law.

The evidence shows that a labor dispute, involving the United Papermakers and Paperworkers Union, Local 189, and the captioned employer, began August 27, 1961. The labor dispute was authorized by the International Union. Production ceased at the pulp and papermill at the Bogalusa Division

of Crown Zellerbach Corporation. Picket lines were established. As a result of the work stoppage, the claimants became unemployed. The claimants maintain that they did not call a strike vote and that they have been chartered as an individual union, being designated as Local 189-A, and are independent of Local 189. The employer submitted in evidence the Labor Agreement between the Bogalusa Mill and United Papermakers and Paperworkers, A.F.L.-C.I.O. The first paragraph, under the title **Agreement** reads as follows:

> "This Agreement made and entered into this the first day of July, 1960, by and between Crown Zellerbach Corporation, Bogalusa Mill, Bogalusa, Louisiana, hereinafter called the Company, and the United Papermakers and Paperworkers and its Locals No. 189 and 189-A, hereinafter called the Union."

Among others, the Agreement was signed by the Presidents of both Locals 189 and 189-A. Article XI, Section 7, Constitution, United Papermakers and Paperworkers, A.F.L.-C.I.O., provides as follows:

> **"Section 7.** Any person having accepted employment in any place in which a strike has been approved by the International Executive Board shall, by this act, expel himself from the membership in the International Union, and any person, whether member of the organization or otherwise, having accepted employment in any place in which a strike was approved by the International Executive Board, shall be entitled to membership in the International Union only on payment of a special initiation fee, which shall have the approval of the International Executive Board."

As a result of Local 189 going on strike, the members of Local 189-A were also required to go on strike. Local 189-A did take a strike vote; however, the President of the Union testified in part as follows:

> Ortique: Are you as President of Local 189-A bound by strike action taken by any other union at Crown Zellerbach?
>
> Brown: Yes.
>
> Ortique: If Local 189 is presently on strike, does Local 189 tell Local 189-A to go on strike?
>
> Brown: No.
>
> Ortique: Does the fact that Local 189 declare that they are on strike require that Local 189-A go on strike?

Brown: Yes.

Ortique: Did Local 189-A take a strike vote?

Brown: They did.

Ortique: What was the result of this vote?

Brown: We don't know.

The sole question that presents itself, in the instant cases, is whether or not the Administrator had sufficient evidence to arrive at his original determination that the claimants were participating in or interested in a labor dispute that caused their unemployment, and whether the Appeals Referees had sufficient evidence to arrive at their conclusion that the determination of the Agency is correct.

The evidence, before this Board, conclusively establishes, beyond a reasonable doubt, that the claimants herein were unemployed as a result of a labor dispute. It has been established that they were interested in the outcome of this dispute. The Labor Agreement entered into between Local 189 and 189-A, is signed jointly by their Presidents. The Constitution provides that any members of Local 189-A, who performed work in an area where a labor dispute is in progress, loses his union rights and would be required to pay an initiation fee for membership.

The evidence is conclusive that the claimants are ineligible for unemployment benefits as provided in the above-cited Section of the Louisiana Employment Security Law.

IT IS ORDERED That the decision of the Appeals Referees be affirmed.

LOUISIANA BOARD OF REVIEW

APPEAL FILED: December 6, 1961

DECISION MAILED: February 2, 1962

D:bhd

/s/ K. Williams
K. WILLIAMS, Chairman

/s/ Blanche Long, Secretary

FURTHER APPEAL RIGHTS

If you do not agree with the above decision, you may file a petition for review in the 22ND JUDICIAL DISTRICT COURT, PARISH OF WASHINGTON, within ten (10) days after the mailing date as shown hereon. If you have any questions regarding this decision, you may consult the local office through which you filed your claim.

22nd Judicial District Court

PARISH OF WASHINGTON

STATE OF LOUISIANA

No. 21,778

TOM BROWN, ET AL

versus

RICHARD E. BROWN, JR.
ADMINISTRATOR OF THE DIVISION OF
EMPLOYMENT SECURITY

JUDGMENT

This cause came on pursuant to previous assignment. Present: Talley, Anthony, Hughes & Knight, Attorneys for Crown Zeilerbach Corporation; Revius O. Ortique, Jr., Attorney for Plaintiffs; and Melvin Bellar, Attorney for Administrator.

The Court, after reviewing the record and hearing the arguments of counsel, and being of the opinion that the law and the evidence are in favor of the Defendants, and for the written reasons assigned:

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that there be judgment herein affirming the decision of the Board of Review of the Louisiana Division of Employment Security, denying benefits to the various plaintiffs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiffs pay all costs of this suit.

Covington, Louisiana, this the 16th day of November, 1962.

s Frederick S. Ellis
Frederick S. Ellis
Judge

22nd Judicial District Court

PARISH OF WASHINGTON
STATE OF LOUISIANA

No. 21,778

TOM BROWN, ET AL

versus

RICHARD E. BROWN, JR.
ADMINISTRATOR OF THE DIVISION OF
EMPLOYMENT SECURITY

REASONS FOR JUDGMENT

This is a petition or judicial review filed on behalf of the members of the United Papermakers and Paperworkers Local Union No. 189-A against the administrator of the Division of Employment Security asking review of a decision of the Board of Review of that body denying to the petitioners unemployment compensation under the employment security laws of this state.

From the record it appears that Local 189 and Local 189-A of the United Papermakers and Paperworkers Union are both chartered locals of the International Union, the members of both of said locals being employed by Crown Zellerbach Corporation at its Bogalusa Mill.

It further appears that all of the parties plaintiff to this action are members of Local 189-A, that on August 27, 1961 a labor dispute commenced on the premises of the pulp and paper mill of Crown Zellerbach Corporation situated in Bogalusa, Louisiana, and that the said labor dispute caused a work stoppage at the said mill. It was further stipulated by the parties at the time of the hearing before the Board of Review that as a result of the work stoppage the plaintiffs on this case, members of Local 189-A, became unemployed.

The record further reflects that Local 189 voted to strike, and that a strike vote was taken by Local 189-A. It is not clear as to what the result of that strike vote was. It is alleged in brief by counsel for petitioners in this case that there was a vote not to strike.

The law is clear that an employee is not eligible for benefits under the Employment Security Act if his unemployment is due to a labor dispute in active progress at his place of

business, and further provided that he is participating in or interested in the said dispute. That is the sole question this Court must decide.

It is argued by counsel for petitioners that, in view of the fact that Local 189-A is a separately chartered local, and in view of the fact that it voted not to strike. It is not participating in or interested in the strike.

The other side of the coin is that Local 189-A is certainly bound by the action of Local 189 in going on strike since the strike was authorized by the international union. As a matter of fact, if Local 189-A had failed to observe the strike, its members would have been discharged from the international union, and the local would in all likelihood have lost its charter, in addition it is pointed out that in the labor agreement between Crown Zellerbach and the Papermakers, Locals 189 and 189-A were treated and referred to as one union, although the agreement was signed by representatives of both locals.

Long and exhaustive briefs have been filed both before the Board and in this Court, and the question most ably argued by counsel for the petitioners, the employer, and the Division of Employment Security.

After a careful consideration of all the contentions advanced in this matter, I have come to the conclusion that it is impossible for Local 189-A to divorce itself from the action taken by the international union in authorizing this strike. Local 189-A is part and parcel of the union whether or not it took a strike vote itself, and is bound by the action of its brother local and the international. The fact that the internaional has made available and is holding in escrow strike benefits which it considered to be due to Local 189-A is an indication that the union itself shares this point of vew.

There can be no doubt that the members of Local 189-A are "unfortunate victims of circumstances." However, the Court cannot let this fact blind it to the inevitable conclusions to be drawn from the facts and the law in this case.

Accordingly, I will sign, when presented to me, a judgment affirming the decision of the Board of Review of the Louisiana Division of Employment Security at plaintiff's costs.

Covington, Louisiana
October 31, 1962
Filed Nov. 2, 1962
(Sgd) Mary Ella Palmer
Deputy Clerk of Court

(Sgd) Frederick S. Ellis
Judge

Court of Appeal, First Circuit

STATE OF LOUISIANA
OFFICE OF CLERK
STATE CAPITOL
BATON ROUGE, LOUISIANA

November 12, 1963

Dear Sir:

Attached you will find copy of opinion in a case in which you are an attorney of record.

Your attention is invited to Rule XI of the Uniform Rules of the Courts of Appeal, especially to Section 1, which provides:

"Notice of judgments of the court will be given personally, or by certified or registered mail, by the clerk of court to at least one of counsel for each of the parties litigant; and applications for rehearing and briefs in support thereof must be filed in quintuple copies on or before the fourteenth calendar day after, but not including, the date of receipt of such notice; and no extension of time therefor shall be granted."

KARL LECHE
Clerk, Court of Appeal, First Circuit

Court of Appeal

FIRST CIRCUIT
STATE OF LOUISIANA

No. 5947

TOM BROWN, ET AL

VERSUS

RICHARD E. BROWN, JR., ADMINISTRATOR, DIVISION OF EMPLOYMENT SECURITY, DEPARTMENT OF LABOR, STATE OF LOUISIANA

APPEAL FROM THE HONORABLE TWENTY-SECOND JUDICIAL DISTRICT COURT, WASHINGTON PARISH, HONORABLE FREDERICK S. ELLIS, JUDGE, PRESIDING

Before Lottinger, Herget, Landry and Reid, J J
Ellis, J., recused
Landry, Judge

This is an appeal by 329 members of Local 189-A, United Papermakers and Paperworkers, A.F.L.-C.I.O., International Union, from the judgment of the trial court affirming the decision of the Board of Review, Division of Employment Security, Department of Labor, State of Louisiana, (sometimes hereinafter referred to simply as "the Board"), which disqualified appellants for unemployment compensation benefits because of appellants' participation in a strike or labor dispute at the plant of Crown Zellerbach Corporation, Mill Division, Bogalusa, Louisiana, where appellants were employed.

The pertinent facts giving rise to the instant litigation were tendered principally by stipulations which reveal that The United Papermakers and Paperworkers, A.F.L.-C.I.O., International Union, (sometimes hereinafter referred to simply as "International" or "the Union"), is the duly authorized and recognized bargaining agent for all its members employed in the Bogalusa, Louisiana, plant of Crown Zellerbach Corporation (sometimes hereinafter designated simply as "Crown Zellerbach" or "the plant"). By choice, all members of the International employed at the plant have been divided into two separate and distinct local unions known as Local 189 and Local 189-A, respectively. Local 189 is composed entirely of members of the Caucasian Race whereas 189-A consists wholly of members of the Negro Race. Said locals, though operating independently of each other and each having its own officers, are nevertheless both subject to all rules, regulations and directives of the International or parent union. International, as bargaining agent for the members of both locals, negotiated a contract with Crown Zellerbach governing wages and working conditions of the members of the two local subordinates, the contract being signed by the Presidents of 189 and 189-A. While the contract was in force a labor dispute commenced at the plant on August 27, 1961, causing a work stoppage of the pulp and paper mill as a result of which claimants, members of Local 189-A, became unemployed. A strike vote was taken by the members of Local 189, the result of which was to authorize a strike by the members of said local. By directive of the International President, Local 189-A took a strike vote the outcome of which was a decision not to strike. Picket lines were established by the members of Local 189 which it was the duty and obligation of appellants, as members of 189-A, to honor under penalty of expulsion from union membership and the imposition of monetary assessment. No attempt was made by any appellant to cross the picket lines established by the members of their brother local. Strike benefits were tendered claimants by the International and rejected, it being conceded, however, the proferred benefits were retained by International in escrow for payment to claimants in the event

of final rejection and denial of their claims for unemployment benefits. No force, threats, intimidation or coercion was used, directed or employed against any claimants to prevent or discourage crossing of the picket lines established by the striking members of Local 189.

In due time appellants made individual application for unemployment benefits which applications were denied upon the administrative determination appellants were participating in a labor dispute and therefore ineligible for unemployment benefits under the provisions of LSA-R.S. 23:1601 (4). All appellants exhausted their administrative remedy of appeal first to the Appeals Referee and then to the Board of Review, following which appeal was made to the District Court and finally to the Court of Appeal.

In his brief before this Court, learned counsel for appellants maintains the Board of Review and the trial court erred in concluding Locals 189 and 189-A were one and the same union. In substance he contends both Crown Zellerbach and the International recognize the two locals as separate and distinct unions each possessing different officers, each representing employees of different races and job classifications and each being totally independent of the other. From this he argues the action of the members of Local 189 should not be attributed to appellants who were in no way responsible for the strike and therefore were not absent from work by choice but by virtue of a circumstance over which they exercised no control. Secondly, esteemed counsel for appellants maintains the members of Local 189-A neither participated in nor benefited from the strike called by Local 189 and consequently, were improperly declared ineligible for unemployment benefits under the applicable status.

The issue, though res nova in this state, has been the source of considerable litigation in other jurisdictions as will hereinafter appear.

The applicable portion of the Louisiana Employment Security Law, namely, LSA-R.S. 23, Chapter 11, Section 1601.4 provides as follows:

"§ 1601. Disqualification for benefits

"An individual shall be disqualified for benefits:

* * *

"(4) for any week with respect to which the Administrator finds that his unemployment is due to a labor dispute which is in active progress at the factory, establishment, or other premises at which he is or was last employed;

but such disqualification shall not apply if it is shown to the satisfaction of the Administrator that he is not participating in or interested in the labor dispute which caused his unemployment. * * * *"

From the foregoing it readily appears a person claiming unemployment benefits is disqualified from receipt thereof if his unemployment is the result of a labor dispute unless it be affirmatively shown he is neither participating in nor interested in the labor dispute which occasioned the unemployment on which his claim for benefits is founded. The aforesaid provision is not peculiar to Louisiana since a majority of states have disqualification provisions substantially similar to our own. See 13 Labor Law Journal, February, 1962, Page 177.

Our careful consideration of the applicable statute as a matter of first impression, impels the conclusion the clear import thereof is to place the burden of proof upon the employee seeking unemployment benefits. In effect the statute provides an individual is disqualified for benefits during any week in which his employment results from a labor dispute but such disqualification shall be ineffective and without application if it be shown he is neither participating in nor interested in the labor dispute which caused his unemployment. It would appear the legislature therefore intended disqualification to ipso facto result from unemployment caused by a labor dispute unless and until the affected employee adduced proof that he is not participating therein or interested in the outcome thereof. No other conclusion appears justifiable or logical in view of the terminology appearing in the statute. The same interpretation has been accorded similar statutes in Nebraska and Pennsylvania. See Borchman Sons v. Carpenter (Neb. 1958) 166 Neb. 322, 89 N. W. (2d) 123; Oluschak v. Unemployment Compensation Board of Review (Penn. 1960) 159 Atlantic (2d) 750.

In a case involving a factual situation on all fours with the present matter the Supreme Court of Alabama held the members of a local disqualified from unemployment benefits under a statute similar to our own. Thus in United States Steel Corporation v. Wood, 114 So. (2d) (1959) 551, where two subordinates of an international union were in a single plant and one local struck effectively closing the entire plant, the members of the non-striking local were denied benefits. In disposing of the issue the Supreme Court of Alabama used the following language which we cite with approval:

"It seems to us that Usher is to be distinguished from the instant case. In Usher the claimant had absolutely no affiliation with the striking union, and it was on that bas-

is, and that basis alone, that the statute was interpreted as permitting benefits when the claimant's unemployment is 'because of "labor dispute" in which he was in no way involved and the causes of which unemployment he, his agents or organization were powerless to avert.' In the instant case, the claimant's relationship with the striking local is thus stated in the Court of Appeals' opinion on rehearing:

> "'That the claimant was a member of United Steelworkers of America, C.I.O.; that the production and maintenance employees of employer's Ore Mines & Quarries Division (including the employees at the ore conditioning plant and the claimant and other employees at Ore Mine No. 7) were represented by United Steelworkers of America, C.I.O., as the exclusive bargaining agent; that such production and maintenance employees were covered by one collective bargaining agreement negotiated by the same bargaining representatives and executed in the name of and on behalf of the same Union, namely, the United Steelworkers of America, C.I.O.; and that the strike causing the unemployment of claimant was actually terminated as a result of telegraphic orders or instructions from the Chief Executive Officer of United Steelworkers of America, C.I.O.'
>
> "We think the restrictive provisions of Subdiv. A, § 214, Tit. 26, as amended, supra (for a discussion of this statute see Usher, supra, including the minority opinion), denote a clear legislative purpose and intent; and that such purpose and intent should not be extended beyond the holding in Usher. To hold that claimant is entitled to unemployment benefits in this case would be to extend that holding. We find no warrant to do so by judicial interpretation."

Predicated upon the foregoing stipulation of fact, and the testimony of appellant Tom Brown, President of Local 189-A, hereinafter discussed, we conclude that not only have appellants failed to carry the incumbent burden of establishing their lack of participation in the strike which admittedly resulted in their unemployment but also that the record fully substantiates the finding of the Board of Review to the effect appellants did in fact participate therein within the meaning and intendment of the term "participate" as used in the applicable statute.

It will be recalled both Locals 189 and 189-A are members of the same International Union, which parent union is conceded to be the bargaining agent for each said Local insofar

as the employer Crown Zellerbach is concerned. It must also be remembered the International is the agent of both locals and as such has been delegated full authority to represent said locals in their dealings with the employer in question. Their common membership in a single International demands and requires their acceptance of the directives of the International and obedience to its decrees or suffer the alternative awesome consequences of expulsion from union membership and unlimited monetary assessment as provided by Article XI, Section 7 of the union's constitution appearing of record. In addition their interest in the strike is manifest considering the proffer of strike benefits made by the International and the fact that said benefits are being held in escrow for payment to claimants upon their disqualification becoming final. Further, the testimony of appellant Brown is unequivocally to the effect that not only did claimants make no attempt to cross the picket lines established by Local 189 but also that Local 189-A officially recognized the picket lines and refused to cross them. Such action by claimants clearly constitutes participation in a labor dispute. Finally there appears of record a letter from Harry Sayre, Executive Vice President of the International to appellant, Tom Brown, President of Local 189-A advising that the possibility of members 189-A continuing employment at the plant terminated when the strike by Local 189 commenced. Under such circumstances the action of appellants can only be construed as voluntary participation in the strike called by their brother local.

Disqualification under circumstances similar to those herein shown has also been decreed in Indiana, Connecticut and Oregon. See Adams v. Review Board (Indiana, 1951), 98 N.E. (2d) 681, Bartlett v. Administrator, Unemployment Compensation Act (Connecticut, 1955), 142 Conn. 497, 115 Atlantic (2d) 671, Cameron v. DeBoard (Oregon, 1952) 370 Pac. (2d) 709.

Our careful consideration of the numerous cases dealing with the subject matter presently under consideration, reveals the rational of the majority rule, denying benefits under circumstances akin to those herein encountered, is two-fold. First, the action of the union is the action of the membership and he who accepts the benefits of collective bargaining through an organizational representative must likewise accept the attending hardships, if any, resulting from the actions of the agency to which he has delegated the power to represent him in negotiations with his employer with respect to wages and working conditions. It is elementary that a principal is bound by the actions of his agent performed within the scope of the delegated authority. Secondly, to permit receipt of benefits under circumstances attending the case at bar, is to endorse the harsh inequity of compelling the employer to at

least partially finance the strike against him. LSA-R.S. 23: 1531-1571, inclusive, provides for the payment by employers of substantial contributions into the fund from which the benefits due unemployed persons are paid. As pointed out in numerous cases from other jurisdictions there is obvious inequity in permitting a union the advantage of financing a strke at the expense of the employer with whom negotiations are in progress.

Affirmed.

* * * * *

Court of Appeal

FIRST CIRCUIT

STATE OF LOUISIANA

Baton Rouge, La.

December 16, 1963

Mr. Revius O. Ortique, Jr., Attorney
2140 St. Bernard Avenue
New Orleans, Louisiana

Dear Sir:

You are advised that an application for a rehearing has this day been refused in the following case, in which you are counsel of record:

No. 5947

BROWN

vs.

BROWN, ADM.

Yours very truly,

s/ Karl Leche

Clerk of Court

Supreme Court of Louisiana

NEW ORLEANS

February 14, 1964

No. 47,073

TOM BROWN ET AL.

v.

RICHARD E. BROWN, JR., ADMINISTRATOR, DIVISION OF EMPLOYMENT SECURITY, DEPARTMENT OF LABOR, STATE OF LOUISIANA

In re: Tom Brown et al applying for certiorari or writ of review to the Court of Appeal, First Circuit, Parish of Washington.

The application is denied.

The judgment complained of is correct.

s JBF
s JBH
s PWH
s EHMcC
s WBH
s JWS
s PWS

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans, February 14, 1964

s Harold A. Moise, Jr.

Deputy Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 1074

TOM BROWN, et als.

Petitioners

versus

RICHARD E. BROWN, JR., ADMINISTRATOR, DIVISION OF EMPLOYMENT SECURITY, DEPARTMENT OF LABOR, STATE OF LOUISIANA

and

CROWN ZELLERBACH CORPORATION
BOGALUSA MILL DIVISION

Respondents

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUSIANA ON BEHALF OF THE ADMINISTRATOR OF THE DIVISION OF EMPLOYMENT SECURITY, DEPARTMENT OF LABOR, STATE OF LOUISIANA

MARION WEIMER, MELVIN L. BELLAR and
JAMES A. PIPER, ATTORNEYS
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E. P. RIVAS, INC., Printing, 615 Bienville St., New Orleans, La.

INDEX OF SUBJECT MATTER

	Page
Statement of the case	2, 3
Argument as to non-compliance with Rule 23, Section F, Rules of the Supreme Court of the United States	3, 4
Argument as to the question of jurisdiction	4, 5
Argument as to failure of petitioners to show discrimination	6, 7, 8
Argument on the merits	8, 9, 10
Conclusion	17, 18
Certificate of Service	18

TABLE OF CASES

Adams v. Retired Board of Indiana Emp. Sec. Div., 98 N.E. 2d 681	14
Bachman Sons v. Carpenter, 80 N.W. 2d 123	13
Bartlett v. Adm., 115 A. 2d 671	11
Brown v. Brown, 158 So. 2d 305	16, 17
Cameron v. DeBoard, 370 P. 2d 709	13
Copen v. Hix, 43 S.W. 2d 582	14
George v. Catherwood, 223 N.Y.S. 2d 326	14

INDEX OF SUBJECT MATTER—(Continued)

	Page
Henzel v. Cameron, 365 P. 2d 498	13
Local No. 658 Boot & Shoe Workers Union v. Brown Shoe Co., 87 N.E. 2d 625	11
Olischak v. Unemp. Comp. Board of Review, 159 A. 2d 750	14
Quenner v. Magnet Mills, Inc., 167 S.W. 2d 1	11
Steele v. Louisville and Nashville RR Co., 323 U.S. 192, 65 S.Ct. 226	16, 17
Tunstall v. Brotherhood of Locomotive Firemen, 323 U.S. 210, 65 S.Ct. 235	16
Unemp. Comp. Com. v. Martin, 45 S.E. 2d 385	14
U. S. Steel v. Board of Rev., 150 A. 2d 361	14
United States Steel Corporation v. Wood, 114 So. 2d 551	11, 12, 13

TABLE OF STATUTES AND OTHER AUTHORITIES

American Jurisprudence, Volume 54, Section 191	5
American Jurisprudence, Volume 54, Section 220	6
American Jurisprudence, Volume 54, Section 221	4
LSA-R.S. 23:1601(4)	8, 9, 10, 14, 15

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 1074

TOM BROWN, et als.

Petitioners

versus

RICHARD E. BROWN, JR., ADMINISTRATOR, DIVISION OF EMPLOYMENT SECURITY, DEPARTMENT OF LABOR; STATE OF LOUISIANA

and

CROWN ZELLERBACH CORPORATION
BOGALUSA MILL DIVISION

Respondents

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUSIANA ON BEHALF OF THE ADMINISTRATOR OF THE DIVISION OF EMPLOYMENT SECURITY, DEPARTMENT OF LABOR, STATE OF LOUISIANA

STATEMENT OF THE CASE

Petitioners are all members of the United Papermakers and Paperworkers, AFL-CIO, sometimes hereinafter referred to simply as the Union. For reasons best known to the Union itself, its members who are employed in Crown Zellerbach's Bogalusa, Louisiana plant are divided into two segments designated as Local 189 (composed of only white employees) and Local 189A (composed of only colored employees). The separation of this Union into two segments was a determination made by the Union itself; a matter in no way involving the employer and concerning which the employer did not participate.

For reasons which do not appear to be too material to a resolution of the issue raised by this Application, the Union called a strike at Crown Zellerbach's Bogalusa, Louisiana plant. As a result of this strike, a picket line was duly established.

After petitioners became unemployed as a result of the calling of this strike, they all filed claims for unemployment compensation benefits under the provisions of the Louisiana Employment Security Law. Being of the opinion that claimants were both interested in and participating in the strike, the Administrator of the Division of Employment Security issued an initial determination disqualifying all claimants who were members of the United Papermaker's and Paperworkers, AFL-CIO, the striking union.

Claimants subsequently appealed the initial determination to the Appeals Referee who conducted a hearing on the issues. Based on the evidence adduced at this hearing, the Appeals Referee affirmed the administrative determination. On a further appeal to the Louisiana Board of Review, the decision of the Appeals Referee was affirmed.

Petitioners then instituted suit in the Twenty-Second Judicial District Court, Parish of Washington, State of Louisiana. The District Court, for written reasons assigned, affirmed the ruling of the Louisiana Board of Review. On an appeal to the Court of Appeal of the First Circuit, the disqualifications were once more affirmed in an opinion which we think clearly and correctly analyzed the real question presented. Claimants then applied to the Supreme Court of Louisiana for Writs of Certiorari and Review to review the ruling of the Court of Appeal. Their Application was denied as the Supreme Court felt that the ruling of the Court of Appeal was correct. The present petition was then filed with this Honorable Court.

ARGUMENT IN SUPPORT OF DISMISSAL OF APPLICATION FOR WRITS

Petitioners' Application to this Honorable Court for Writs of Certiorari should be dismissed on the following grounds.

1. Under Section F of Rule 23 of this Honorable Court, an Application for Writs must affirmatively show specifically at which point in the proceeding a Federal question is raised, the specific manner in which the Federal question was raised and the disposition of the Federal question made by the State Court. We may analyze petitioners' Application in vain but we will not find any affirmative statement tending to show the raising of a Federal question by formal pleadings at any stage in the proceeding prior to this Application. The reason is simple. A Federal question has never been raised through pleadings. The only inkling of the possible existence of a Federal question is contained in petitioners' Application to the Louisiana Supreme Court for Writs to review the ruling of the

Court of Appeal. Even at that stage, the issue was not properly and specifically raised.

"The requirement of a record showing of a Federal question in the state court from which an appeal to the United States Supreme Court is sought does not mean that the record must show in direct and positive terms that the necessary Federal question was raised and a decision thereon made. It is sufficient if it appears by clear and necessary intendment that the question must have been raised and must have been decided in order to have induced the judgment. No particular form of words need be used in order that the Federal question may be said to be involved. It is not, however, enough to show that a Federal question might have arisen in and been applicable to the case, or that there may be hidden in the record a question which, if it had been raised, would have been of a Federal nature, or that the state court assumed the validity of the state statute or treated as settled the question of its validity. The Court is not at liberty to resort to forced inferences and conjectural reasonings, or to possible or even probable suppositions as to the points raised and decided by the state court. There must be averments so distinct and positive as to place it beyond question that the party bringing the case up for review intended to assert a federal right."[1]

For these reasons, we respectfully submit that the Application filed with this Honorable Court does not comply with the rule which specifically sets forth in detail the elements which must be contained in an Application for Writs.

2. There being no Federal question involved, this Honorable Court lacks jurisdiction to entertain petitioners' Application for Writs. A thorough analysis of the issues raised in

[1] 54 Am. Jur. 854, § 221. Citing *Black v. Cutter Laboratories*, 351 US 292, 100 Led. 1188, 76 S.Ct. 824.

this litigation will clearly disclose that a Federal question, a necessary element to confer jurisdiction on this Honorable Court, has not been raised, and in fact does not exist. It has never been contended by pleadings at any stage of this proceeding in the State Court that the Louisiana Employment Security Law in any manner violates any provision of the Constitution of the United States. The sole issue which was ever raised involved an interpretation by the State Court of the provisions of the State Statute.

"A real and substantial Federal question is essential to the jurisdiction of the United States Supreme Court over judgments of state courts. The Federal Supreme Court will not assume jurisdiction to review a state judgment where the asserted Federal right is so wanting in foundation and so unsubstantial as to be devoid of all merit, and frivolous, or where it is at most conjectural as to whether the party will be deprived of any constitutional right. The Federal question must be one that is not merely abstract or moot. The mere averment of a Federal question or some claim of constitutional right is not sufficient unless it can be shown that the question is a real one, and that there is a real and substantial controversy which deserves serious consideration. Mere averment of a Federal question without color of ground therefor is insufficient."[2]

This Honorable Court has, on a number of occasions, consistently held that, if a decision of a State Court is adequately founded on State grounds, this Court will not interfere with the ruling of the highest State Tribunal. Clearly, the statutory grounds on which the Court of Appeal decision, as affirmed by the Louisiana Supreme Court through its denial of claimant's Application for Writs, was predicated are clearly adequate and fully sustain the Court's conclusion.

[2] 54 Am. Jur. 825, § 191.

If a decision of a higher State Tribunal rests on both State and Federal grounds, this Court will not assume jurisdiction to review the matter under the guise of a Federal question if the State grounds, on which the decision was predicated, are sufficient to support said decision.

Not only must it be shown that a Federal question has been raised and disposed of by the State Court, in addition, it must also be affirmatively shown that a disposition of the Federal question is necessary to sustain the decision of the State Court.* Since this case does not involve a Federal question, the determination of which is essential to sustain the State Court decision, we respectfully submit that petitioners' Application should be dismissed for want of jurisdiction on the part of this Honorable Court.

3. The record is absolutely void of any showing of discrimination against petitioners because of their race. The fact that the members of the United Papermakers and Paperworkers, AFL-CIO, employed in the Bogalusa, Louisiana plant of Crown Zellerbach, are designated as two separate locals, one composed of white employees and the other of colored employees, does not in itself remotely raise any discrimination on account of race. This is particularly true when we analyze the case which was actually presented to the State Court for consideration.

As was stated in the statement of the case hereof, the breaking down of union membership into two locals was a matter strictly within the Union itself. If this Union saw fit to so arrange its affairs, this is a matter which concerned neither Crown Zellerbach nor the Administrator of the Division of Employment Security. If one of the segments of this Union was

*54 Am. Jur. 852, § 220.

acting capriciously and arbitrarily to the detriment of the other, a question of illegal discrimination might, in all probability exist, but it would have to be raised in a suit against the Union brought for that specific purpose. The fact that some Union members may not directly benefit, or may even suffer some inconvenience, as a result of the actions of the Union, it does not necessarily follow that these Union actions are discriminatory or intended to benefit some at the expense of others. These are occurrences which are sometimes avoidable.

This proceeding is simply a judicial review duly authorized by State Statute of an administrative ruling on claims for unemployment compensation benefits. It is not a suit to question the existence or the validity of intra-union arrangements.

A proceeding instituted to judicially review a ruling of the Louisiana Board of Review in connection with claims for unemployment compensation benefits is neither a proceeding to question union arrangements nor a proceeding to question the validity of actions taken by an employer in derogation of rights of its employees. Even if it were true, and this is certainly not established by the record, that these petitioners were discriminated against by their employer with respect to their contract of employment, this discrimination would have to be raised in a suit brought for that specific purpose and could not be raised in a proceeding to review an administrative denial of unemployment compensation benefits. The only issues which can be legally raised in this proceeding relate to the rights of these petitioners to receive unemployment compensation benefits under the particular circumstances of their unemployment.

The fact that all these petitioners happened to be members of the colored race had nothing whatsoever to do with their disqualification from the receipt of benefits. The sole reason for their disqualification was that they are all members of a

union which called a strike, which strike resulted in their unemployment. Under the clear and unequivocal provisions of the Louisiana Employment Security Law, all persons whose unemployment is due to a labor dispute in which they are either participating or interested are disqualified from the receipt of unemployment compensation benefits during the existence of such labor dispute.[4] Therefore, when the Union of which these petitioners are all members effectuated the strike which brought about their unemployment, the Administrator had no alternative but to disqualify them. Had any member of the segment of the Union composed of all white employees filed claims for benefits, they, likewise, would have been disqualified.

We, therefore, respectfully submit that the record in this case is absolutely void of any showing which would tend to establish that petitioners were disqualified from benefits because of their race.

ARGUMENT ON THE MERITS

As a result of a strike officially sanctioned by the United Papermakers and Paperworkers, AFL-CIO, all employees of Crown Zellerbach's Bogalusa, Louisiana plant who were members of Locals 189 and 189A of said Union became unemployed. While the record indicates that the members of Local 189 voted overwhelmingly in favor of the strike the members of Local 189A voted not to strike. When the strike became effective, the membership of Local 189A was officially notified by the International of the United Papermakers and Paperworkers, AFL-CIO, that strike benefits were available and, in fact, a check to cover these benefits was duly forwarded to the Local. Although the check was returned by the Local to the Parent Union, the Local was, nevertheless, notified that

[4] LSA-RS 23:1601(4)

these strike benefits were being held available at any time the membership of Local 189A desired to accept them.

Under the agreement between Crown Zellerbach and the United Papermakers and Paperworkers, AFL-CIO, a copy of which was filed in the record, it will be noted that both Locals were referred to simply as the Union. It will further be noted from a copy of the Constitution of the United Papermakers and Paperworkers, AFL-CIO, which is also filed in the record, that any member of the Union who crosses a picket line duly set up where a strike has been called with the sanction of the Union, such member immediately forfeits his membership in the Union. Since the strike in question was fully sanctioned by the Union, neither the members of Local 189 nor 189A were in any position to report to work as they were prohibited from crossing the picket line so long as the strike continued and so long as they retained their membership in the Union.

The President of Local 189A, Tom Brown, officially representing all the members of his Union, testified that, under the terms and contract existing between the members and the Union, a strike of any Local duly authorized by the Union required that all other Locals, whose members were members of the Union, were obligated to join in the strike.

The Statutory provision involved in this proceeding is LSA-R.S. 23:1601(10), which reads:

§ 1601. Disqualification for benefits

An individual shall be disqualified for benefits:

* * *

(10) For any week with respect to which the Administrator finds that his unemployment is due to a labor dispute which is in active progress at the factory, establishment, or other premises at which he is

or was last employed, but such disqualification shall not apply if it is shown to the satisfaction of the Administrator that he is not participating in or interested in the labor dispute which caused his unemployment . . ."

The ultimate issue which must be considered by this Honorable Court is whether or not petitioners were "participating in or interested in the labor dispute which caused their unemployment." It is conceded that the members of Local 189A, as well as Local 189, are unemployed due to "a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed."

From the very wording of the Act, as well as the universal jurisprudence, it is obvious that the claimant must bear the burden of proving that he is not participating or interested in the labor dispute before he can come within the exception provided in § 1601(c), supra.

Even though the burden of proof is on the claimant, we submit that, notwithstanding that the Administrator and the employer do not have the burden of proof, they have, in fact, borne the burden of proof in this case by an overwhelming preponderance of the evidence and have shown that the members of Local 189A of the United Papermakers and Paperworkers, AFL-CIO, are in every legal and practical sense of the word "participating in or interested in the labor dispute which caused their unemployment."

It cannot be disputed that the members of Local 189 and 189A are members of the same identical union, namely, United Papermakers and Paperworkers, AFL-CIO, and that the members of both Local's have delegated to their common Union their rights in all matters effecting the relationship between Crown-Zellerbach Corporation and the members of the Union.

They have delegated their rights to speak for themselves to the Union and have agreed to be bound by the action of the Union. By virtue of their membership, they are legally and automtically bound by the action of the Union and, by virtue thereof, they cannot act independently of the Union. They have legally constituted the Union as their Agent and it is universally conceded that the principal is bound by the legal acts of his Agent.

Indeed, it is elementary that the act of the Agent is the act of the principal. Since the members of Local 189A are one and the same with the Union, the interest of the Union is one and the same with the interest of the members of the Union. This relationship in and of itself, without the necessity of considering other factors, clearly establishes the fact that the members of Local 189A *are* participating in and interested in the labor dispute which caused their unemployment.

A thorough examination of the jurisprudence throughout the United States reveals that the Courts in many States have consistently held that a member of a local union, not itself on strike, is not entitled to unemployment compensation where his unemployment is due to a strike engaged in by another local union, and both local unions belong to the same national or international union.

The leading case which we have found wherein the factual situation, in all essentials, was the same as the case now under consideration is the case of *United States Steel Corporation v. Wood*, which was decided by the Supreme Court of Alabama in 1959, reported at 111 So. 2d at Page 551. The facts of this case were identical to the facts at hand. There were two locals of the same union organized at the United States Steel Corporation's plant. One of the locals went on strike and effectively shut down the entire operation. The non-striking local then applied for unemployment insurance benefits. The Alabama Court in interpreting their Statute, which is

identical to the Louisiana Statute in all pertinent respects, stated:

> "It seems to us that Usher is to be distinguished from the instant case. In Usher the claimant had absolutely no affiliation with the striking union, and it was on that basis, and that basis alone, that the statute was interpreted as permitting benefits when the claimant's unemployment is 'because of a "labor dispute" in which he was in no way involved and the causes of which unemployment he, his agents or organization were powerless to avert.' In the instant case, the claimant's relationship with the striking local is thus stated in the Court of Appeals' opinion on rehearing:
>
> > "'That the claimant was a member of United Steelworkers of America, CIO, that the production and maintenance employees of employer's Ore Mines & Quarries Division (including the employees at the ore conditioning plant and the claimant and other employees at Ore Mine No. 7) were represented by United Steelworkers of America, CIO, as the exclusive bargaining agent; that such production and maintenance employees were covered by one collective bargaining agreement negotiated by the same bargaining representatives and executed in the name of and on behalf of the same Union, namely, the United Steelworkers of America, CIO; and that the strike causing the unemployment of claimant was actually terminated as a result of telegraphic orders or instructions from the Chief Executive Officer of United Steelworkers of America, CIO.'"

> "We think the 'restrictive' provisions of Subdiv. A, § 21 i, Tit. 26, as amended, supra (for a discussion of this statute see Usher, supra, including the minority opinion), denote a clear legislative purpose and intent and that such purpose and intent should not be extended beyond the holding in Usher. To hold that claimant is entitled to unemployment benefits in this case would be to extend that holding. We find no warrant to do so by judicial interpretation."

It is clear that the Supreme Court of Alabama recognized the validity of the argument which we have made above that the members of a union are obviously bound by the actions of the union and cannot be heard to say that the interest and participation of the union is not the interest and participation of the membership.

In the case of *Cameron v. DeBoard*, decided by the Supreme Court of Oregon in 1961, reported at 370 P. 2d 70, the Court pointed out that the trier of fact must always consider union membership in a common union in deciding whether the claimant is eligible for unemployment insurance benefits.

In the recent case of *Burchuan Sons v. Carpenter*, decided by the Supreme Court of Nebraska and reported at 89 N.W. 2d 123, the Court said:

> "Members of non striking unions are not entitled to benefits even though it was a strike by one union alone that produced their unemployment."

In another Oregon Supreme Court decision, *Henzel v. Cameron*, reported at 365 P. 2d 98, the Court said:

> "It is conceded that unemployment due to a labor dispute may seem 'impersonal' to the individual

worker when he has no selfish interest in the outcome of the dispute, but so long as he is a *member* of a labor movement whose leaders embrace the causes of economic strife in their dealings with management, he must also accept the attending hardships inherent in such activity." (Emphasis ours)

Other cases which support this view are: *Quebner v. Magnet Mills, Inc.*, 167 S.W. 2d 1, Tennessee Supreme Court; *Copen v. Hix*, 13 S.W. 2d 382, West Virginia Supreme Court; *Adams v. Review Board of Indiana Emp. Sec. Div.*, 98 N.E. 2d 681; *Bartlett v. Adm.*, 115 A. 2d 67; *Local No. 658 Boot & Shoe Worker's Union v. Brown Shoe Co.*, 87 N.E. 2d 625; *Unemp. Comp. Com. v. Martin*, 45 S.E. 2d 385; *George v. Catherwood*, 225 N.Y.S. 2d 326; *Olaschak v. Unemp. Comp. Board of Review*, 159 A. 2d 750; and *U. S. Steel v. Board of Rev.*, 150 A. 2d 361.

Many of these cases, in addition to basing the disqualification on the principle that the action of the union is the action of the membership, also point out the extreme inequity in permitting a union to finance a strike with unemployment insurance benefits which the employer pays by calling a strike in only one local, which effectively paralizes the employer's entire operation in the hope that the members of all the other locals who are unemployed because of the strike may be financed during the strike with unemployment insurance benefits. It is a universal principle in the field of unemployment insurance that the State remains "neutral" and does not, through the enactment of unemployment benefits legislation, intend to assist either side in a manner which would be prejudicial to the other. The language of the Act itself makes it clear that the purpose of LSA-R.S. 23:1601(4) was to give neutrality to our Employment Security Act with respect to unemployment caused by strikes or other labor disputes, unless

the unemployed worker can show in fact and in law that he has no legal interest or participation in the labor dispute. Not only have the members of Local 189A failed to show that they have no interest in and are not participating in this strike, on the contrary, it has been clearly shown that they have a very real factual and legal interest in and are participating in this strike.

It would, therefore, do violence to the clear intent and purpose of the Employment Security Act if benefits should be allowed in this case. If the members of the United Papermakers and Paperworkers, AFL-CIO, who have bonded together for their mutual interest, expect the resultant benefits to themselves in a common cause and purpose they must stand ready to accept the liabilities and obligations which they have mutually pledged to each other and should not, either in law or good conscience, expect to be financed by Federal or State tax monies which are paid into the common fund by all of the employers throughout the State, but rather they should finance themselves through strike benefit funds which were tendered to them by their Union and rejected by them in the hope that they would receive the larger benefit amount provided under the Employment Security Act.

The natural, human tendency to feel sympathy toward those who are financially depressed must be fought against and logic and reason must prevail if the noble and commendable purposes, for which unemployment insurance was created, are to continue to be served.

We, therefore, respectfully submit that the facts in this case and the legal results to be drawn therefrom clearly show that the petitioners were interested in or participating in the labor dispute which caused their unemployment and are, therefore, not within the exception as stated in §1601(4), supra.

and are, therefore, disqualified from the receipt of unemployment insurance benefits during the time that the labor dispute was in active progress at the Crown Zellerbach Corporation Plant in Bogalusa, Louisiana, commencing on August 27, 1961.

In support of the petition for the granting of Writs by this Honorable Court, Counsel for petitioners asked this Court to invoke the doctrine of the *Steele* and *Tunstall* cases.[1] While we have no quarrel whatsoever with the doctrine announced in these cases, we completely fail to see its relevance to the issue presented for determination in this proceeding. The *Steele* and *Tunstall* cases were both suits brought against the Union itself wherein it was contended that, because of certain Union actions, the complainants were arbitrarily discriminated against without even having been afforded an opportunity for a hearing. Clearly, these cases have nothing whatsoever to do with the issue raised in this proceeding.

We believe that the Court of Appeal of the First Circuit, State of Louisiana, clearly and correctly analyzed and resolved the real issues raised herein in the last paragraph of its opinion, which reads as follows:[2]

> "Our careful consideration of the numerous cases dealing with the subject matter presently under consideration, reveals the rationale of the majority rule, denying benefits under circumstances akin to those herein encountered, is two-fold. First, the action of the union is the action of the membership and he who accepts the benefits of collective bargaining through an organizational representative must likewise accept the attending hardships, if any, resulting

[1] *Steele v. Louisville and Nashville RR Co.* 323 U.S. 192, 65 S.Ct. 226; *Tunstall v. Brotherhood of Locomotive Firemen*, 323 U.S. 210, 65 S.Ct. 235.

[2] *Brown, Tom et al. v. Brown*, 158 So. 2d 365, 1st Cir. State of La.

from the actions of the agency to which he has delegated the power to represent him in negotiations with his employer with respect to wages and working conditions. It is elementary that a principal is bound by the actions of his agent performed within the scope of the delegated authority. Secondly, to permit receipt of benefits under circumstances attending the case at bar, is to endorse the harsh inequity of compelling the employer to at least partially finance the strike against him. LSA-R.S. 23:1531 — 23:1571, inclusive, provides for the payment by employers of substantial contributions into the fund from which the benefits due unemployed persons are paid. As pointed out in numerous cases from other jurisdictions there is obvious inequity in permitting a union the advantage of financing a strike at the expense of the employer with whom negotiations are in progress."

CONCLUSION

For the reasons hereinabove assigned, we respectfully submit that petitioners' Application for Writ of Certiorari does not comply with Rule 23, Section F, of the rules of this Honorable Court. There is no showing in the record that a Federal question was ever properly raised, passed on by the State Court, or that the determination of a Federal question is necessary to a decision in the case, as the decision of the State Court is adequately founded on State grounds. The record is absolutely bare of any evidence or substantial contention that petitioners were discriminated against in any manner in the application of the provisions of the Louisiana Employment Security Law because of their race.

We finally respectfully further submit that the decision of the State Court is clearly correct and fully justified under

State Law and that it should, accordingly, be sustained and petitioners' Application dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the above Brief have been mailed postage prepaid, to Mr. Revius O. Ortique, Jr. Attorney for petitioners, 2140 St. Bernard Avenue, New Orleans, Louisiana, and to Mr. Bascom D. Talley, Jr., Attorney for former employer, Talley, Anthony, Hughes & Knight, 322 Columbia Street, Bogalusa, Louisiana.

Baton Rouge, Louisiana, this 27th day of May, 1964.

MARION WEIMER, ATTORNEY

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 1074

TOM BROWN, et al,

Petitioners,

versus

RICHARD E. BROWN, JR., Administrator
DIVISION OF EMPLOYMENT SECURITY
DEPARTMENT OF LABOR
STATE OF LOUISIANA

and

CROWN ZELLERBACH CORPORATION
Bogalusa Mill Division,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Louisiana.

BRIEF FOR RESPONDENT IN OPPOSITION CROWN ZELLERBACH CORPORATION,

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INDEX

	PAGE
Opinions Below	1
Jurisdiction	2
Questions Presented	4
Statutes Involved	4
Statement of the Case	4
Argument	6
Conclusion	12
Appendix	13

CITATIONS

Cases:

American Brake Shoe Co. v. Annunzio, Director of Labor, et al, 90 N.E. (2d) 83	8
Bailey v. Anderson, 326 U.S. 203	3
Bowe v. Scott, 233 U.S. 658	3
Edelman v. California, 344 U.S. 357	3
Hulbert v. Chicago, 202 U.S. 275	3
Lanyon, et al v. Administrator of Unemployment Compensation Act, et al, 89 A. (2d) 558	8
Live Oak Water Users' Association v. Railroad Comm. of the State of California, 269 U.S. 354	3
Merrett v. Shreveport Municipal Fire and Police Civil Service Board, 72 So. 2d 519	2
Meyer v. Industrial Commission of Missouri, 224 S.W. (2d) 835	8
New York Central & H. R. R. Co. v. New York, 186 U.S. 269	3

CITATIONS—(Continued)

Cases: (Continued)	PAGE
New York ex rel Bryant v. Zimmerman, 278 U.S. 63	3, 4
State v. Ross, 144 La. 898	2
Stembridge v. Georgia, 343 U.S. 541	3
Stovall v. City of Monroe, 199 La. 195	2, 3
Yazoo & M. V. R. Co. v. Adams, 180 U.S. 41	4
Statutes:	
La. Const., Art. 1, Sec. 2	3
La. Const., Art. 7, Sec. 27	2
La. Rev. Stat., 23:1601 (4)	6, 11
Miscellaneous:	
Labor Law Journal, February, 1962	10
41 Yale Law Journal, 461	11

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Opinions Below

The opinion of the Court of Appeal, First Circuit, State of Louisiana (App. A16 of Petition) is reported at 158 So. 2d 305. The opinion of the Supreme Court of the State of Louisiana (App. A23 of Petition) is reported officially at 245 La. 639, and unofficially at 160 So. 2d 227.

Jurisdiction

This Honorable Court is without jurisdiction in this matter for the following reasons:

1. Petitioners have totally ignored the provisions of Rule 23 (b) (f) of the Rules of this Court, and fail to make any affirmative showing that any federal question was timely or properly presented for determination by the Courts of Louisiana.

2. Petitioners did not in fact raise any federal question in any of the courts below. The petition for judicial review in Twenty-Second Judicial District Court, State of Louisiana, raises no federal questions and makes no reference whatsoever to any constitutional questions, state or federal, (R. 44) nor does the Supplemental and Amended Petition in the trial court. (R. 47). Review by the Court of Appeal of the State of Louisiana is limited to the original record, pleadings and evidence. La. Const., Art. 7, Sec. 27. In their application to the Supreme Court of the State of Louisiana, petitioners raise no federal questions (R. 3 & 4). As the written reasons of the trial judge (R. 51) (App. A13 of Petition) of the Court of Appeal, First Circuit (R. 53 and App. A15 of Petition) and of the Supreme Court of the State of Louisiana (App. A23 of Petition) reveal, none of the courts below have been presented with, or passed upon the validity of any state or federal statute upon the ground of its being repugnant to the Constitution or laws of the United States, as written or as applied. It is well settled under the law of Louisiana that the Supreme Court or the Court of Appeal will not consider a constitutional question unless it has been raised by the pleadings. *Storall v. City of Monroe*, 199 La. 195, 210; *State v. Ross*, 144 La. 898, 915; *Mecrett v. Shreveport Municipal Fire and Police*

Civil Service Board, 72 So. 2d 519, 528 (Court of Appeal, Second Circuit)." As the Supreme Court of Louisiana stated in the *Stovall* case, *supra*:

> "All laws are presumed to be constitutional until the contrary is made clearly to appear and he who urges the unconstitutionality must specially plead its unconstitutionality. *Milton v. Lincoln Parish School Board*, 152 La. 761, 94 So. 386; *City of Shreveport v. Pedro*, 170 La. 351, 127 So. 865; *Ward v. Leche*, 189 La. 113, 179 So. 52."

It is axiomatic that any federal question, if in fact one exists, must be raised timely and in conformity with state practice and procedure. *Live Oak Water Users' Association v. Railroad Comm. of the State of California*, 269 U.S. 354, 357-58; *Hulbert v. Chicago*, 202 U.S. 275, 280; *Edelman v. California*, 344 U.S. 357, 358; *New York ex rel Bryant v. Zimmerman*, 278 U.S. 63, 67; *Stembridge v. Georgia*, 343 U.S. 541, 547; *Bailey v. Anderson*, 326 U.S. 203, 206. Only in the application to the Supreme Court of Louisiana was there a vague and general reference to "constitutional rights to equal protection and due process". (R. 3). Under the well settled jurisprudence of this Court "* * * it must be made to appear that some provision of the Federal, as distinguished from the state, Constitution was relied upon, and that such provision must be set forth." *New York Central & H. R. R. Co. v. New York*, 186 U.S. 269, 273. If the state constitution has a due process clause (which Louisiana does, La. Const., Art. 1, Sec. 2) a claim that due process has been violated will be deemed to relate to that clause. *Hoyt v. Scott*, 233 U.S. 653, 664-65. It is equally clear that if the claim is made that a state statute is "unconstitutional" or that it denies "constitutional rights", it will be assumed that reference is being made to the state constitution and rights thereunder rather than to the Federal Constitu-

tion. *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67-8. At no time was any attack leveled at any particular statute of the State of Louisiana. Without question, if the validity, vel non, of any statute is to be properly placed at issue, it must be clearly identified. *Yazoo & M. V. R. Co. v. Adams*, 180 U.S. 41, 45 & 48.

Question Presented

There are no questions for review. The decision below is based upon adequate state grounds and no Federal questions have been timely or properly raised.

Statutes Involved

The pertinent provisions of the Louisiana Employment Security Law are set forth in the Appendix at p. 13, and of Article 7, Section 27 of the Louisiana Constitution at p. 13.

Statement of the Case.

This litigation involves consolidated cases of claimants, all of whom are members of Local 189-A, United Papermakers and Paperworkers, AFL-CIO, who were determined to be disqualified for unemployment compensation benefits because of a labor dispute at the Crown Zellerbach Mill Division in Bogalusa, Louisiana.

After an initial determination by the local employment office disqualifying the claimants from benefits, an administrative hearing was conducted by the Appeals Referee. (R. 33). By stipulation it was established that "a labor dispute began August 27th, 1961, on the premises of Crown Zellerbach Corporation, Mill Division, and as of this date it is still in active progress". (R. 13); that "the said labor dispute caused a work stoppage in production of the pulp and paper mill". (R. 13); that "as a result of this work stoppage, the appellants, Tom Brown,

et al. members of the United Papermakers and Paperworkers Local 189-A became unemployed". (R. 14); and that the "pamphlet entitled 'Labor Agreement also Plant Rules, Crown Zellerbach Corporation, Bogalusa Mill, Bogalusa, Louisiana, and United Paper Makers and Paper Workers, July 1, 1960-July 1, 1961' as being the contract under which Local 189-A worked * * * ". (R. 13); and that Article XI, Section 7, Constitution, United Papermakers and Paperworkers, AFL-CIO, provides as follows:

> "**Section 7.** Any person having accepted employment in any place in which a strike has been approved by the International Executive Board shall, by this act, expel himself from the membership in the International Union, and any person, whether member of the organization or otherwise, having accepted employment in any place in which a strike was approved by the International Executive Board, shall be entitled to membership in the International Union only on payment of a special initiation fee, which shall have the approval of the International Executive Board." (R. 42-3).

The Appeals Referee, in a well considered opinion, affirmed the Agency determination (R. 34-5), disqualifying the claimants from receiving benefits because of their interest and participation in the labor dispute. The action of the Appeals Referee was affirmed, with written reasons, by the unanimous decision of the Louisiana Board of Review. (R. 41-3). Further appeals were made to the District Court and the Court of Appeal (R. 50 and R. 53). In each case, the administrative determination was affirmed. A rehearing was denied by the Court of Appeal (R. 65) and the Supreme Court of Louisiana denied certiorari. It is of particular significance to note that in the written opinions rendered by the Appeals Referee, the Board of Review, the District Court, the Court of Appeal and the Supreme Court of Louisiana, the claimants were

denied benefits solely and exclusively because of their interest and participation in the labor dispute then in active progress, a determination of fact under state law.

Argument

Petitioners (the claimants below) attempt by this application to raise before this Court purported Federal questions, when none in fact exist and when at no stage in any of the proceedings below was any effort made to plead the unconstitutionality of any statute or to plead that the statute was in any manner being applied in an unconstitutional or discriminatory manner. At no place in the petition to this Court for Certiorari is there any specific reference to the record. The entire application is couched in general terms and broad conclusions of the petitioners, **which are totally unsupported by the record.** This is true not only as to the question of jurisdiction, which has previously been discussed, but as to the case on the merits. There are no specific references or citations to the record for the obvious reason that the record does not, and will not support the uncorroborated allegations contained in the petition before this Court.

Although counsel for opponents, Crown Zellerbach Corporation, are convinced that this Court is without jurisdiction, we will, briefly, address ourselves to the merits of the instant case. At every level of the Administrative proceeding and in the District Court and the Court of Appeal of Louisiana, there was an unqualified finding as a matter of fact and law that the claimants herein (petitioners) were participating and interested in the labor dispute. (R. 35, 43, 52, 56 & 58).

Louisiana Revised Statutes 23:1601 (4) provides as follows:

"§ 1601. Disqualification for benefits

An individual shall be disqualified for benefits:

* * * * * * *

(4) For any week with respect to which the administrator finds that his unemployment is due to a labor dispute which is in active progress at the factory, establishment, or other premises at which he is or was last employed; but such disqualification shall not apply if it is shown to the satisfaction of the administrator that he is not participating in or interested in the labor dispute which caused his unemployment * * *"

A reading of the above-quoted statute makes it clear that all employees are disqualified from benefits when unemployment is due to a labor dispute. It is therefore abundantly clear that the burden of proof is with the claimants to affirmatively establish lack of interest or participation. It will be noted that the claimant must show a lack of any interest. Under Act 97 of 1936, Louisiana, like most states, required that the claimant show that he was not "directly interested in" the labor dispute. By Act 181 of 1946, the word "directly" was deleted from the provisions of the Louisiana law, so that now the claimant must show that he is not **in any way** interested in the dispute which caused his unemployment before he is entitled to benefits. At every level of these proceedings, the claimants completely failed to show lack of participation or interest in the labor dispute, but, on the contrary, the record and the exhibits offered in evidence positively show numerous acts of participation and the interest of every member of Local 189-A in the labor dispute. The claimants refused to cross the picket line of their brother members of the United Papermakers and Paperworkers, AFL-CIO, and have, in fact, admitted that they were honor bound to respect this line. (R. 31).

The great majority of the courts throughout the nation have consistently held that the very act of refusing to cross a picket line constitutes participation in a labor dispute sufficient to disqualify the claimant from benefits. It is well settled that where there is no violence or danger to the body of the person refusing to cross a picket line, his failure to do so is participating in a labor dispute. One who voluntarily refuses to cross a picket line to go to his work is participating in work stoppage. *Meyer v. Industrial Commission of Missouri*, 224 S.W. (2d) 835; *American Brake Shoe Co. v. Annunzio, Director of Labor, et al*, 90 N.E. (2d) 83; *Langon, et al v. Administrator of Unemployment Compensation Act, et al*, 89 A. (2d) 558. It is therefore respectfully submitted that these grounds alone were more than sufficient to support a disqualification from benefits. The Court of Appeal of Louisiana, so found, as follows:

> "Picket lines were established by the members of Local 189 which it was the duty and obligation of appellants, as members of 189-A, to honor under penalty of expulsion from union membership and the imposition of monetary assessment. No attempt was made by any appellant to cross the picket lines established by the members of their brother local. Strike benefits were tendered claimants by the International and rejected, it being conceded, however, the proferred benefits were retained by International in escrow for payment to claimants in the event of final rejection and denial of their claims for unemployment benefits. No force, threats, intimidation or coercion was used, directed or employed against any claimants to prevent or discourage crossing of the picket lines established by the striking members of Local 189." (R. 54)

Turning now to the question of "interest" in the labor dispute, the record is replete with evidence of the

absolute and inextricable interest of the claimants. The Court of Appeal further found that:

> "It will be recalled both Locals 189 and 189-A are members of the same International Union, which parent union is conceded to be the bargaining agent for each said local insofar as the employer Crown Zellerbach is concerned. It must also be remembered the International is the agent of both locals and as such has been delegated full authority to represent said locals in their dealings with the employer in question. Their common membership in a single International demands and requires their acceptance of the directives of the International and obedience to its decrees or suffer the alternative awesome consequences of expulsion from union membership and unlimited monetary assessment as provided by Article XI, Section 7 of the union's constitution appearing of record. In addition their interest in the strike is manifest considering the proffer of strike benefits made by the International and the fact that said benefits are being held in escrow for payment to claimants upon their disqualification becoming final. Further, the testimony of appellant Brown is unequivocally to the effect that not only did claimants make no attempt to cross the picket lines established by Local 189 but also that Local 189-A officially recognized the picket lines and refused to cross them. Such action by claimants clearly constitutes participation in a labor dispute." (R. 57-8)

The International Union has made it clear that the members of Local 189-A are **eligible for strike benefits from the International Union** and **will receive them**. They are to this day being held in escrow. Certainly the members of this local must have an interest in the labor dispute if the International Union is willing to pay the same benefits to all of its members who work at the Boga-

lusa mill. This is understandable, since the Constitution of the International Union requires that all members of the Union must refuse to cross the picket line and refuse employment at any plant where the International has approved a strike.

Under the express terms of the Union constitution, all members of the Union are obligated to support strikes of the Union; and failing to do so are **expelled** from membership. Yet the members of Local 189-A would have this Court believe that they have no interest in the strike or the welfare of the Union. It would appear that the members of Local 189-A would like to eat their cake and have it too. In one breath they say that they are not on strike and should therefore receive unemployment compensation; but when they do not prevail on this, they will be looking to the International Union for srike benefits. It therefore becomes abundantly clear that petitioners' complaint, if any they have, is a matter to be resolved within the internal affairs of the Union, as the record reflects that neither the State of Louisiana nor the employer Crown Zellerbach Corporation exercised any control over the internal affairs of the two locals chartered by the International Union.

The provisions of the Louisiana law, disqualifying persons from unemployment compensation benefits if they are participating in or interested in a labor dispute, are not peculiar to Louisiana. Forty-one of the states have a labor dispute disqualification clause closely similar to that of Louisiana. See Labor Law Journal, February, 1962. The remaining states, which did not follow the proposed uniform legislation after which the Louisiana statute is patterned, disqualify all claimants who have lost their employment by reason of a labor dispute irre-

spective of whether they are interested or participating in the dispute. 41 Yale Law Journal 461, 463.

Under the express provisions of R.S. 23:1601 (4), a claimant must show that he is neither participating nor interested in the labor dispute. This the claimants in the instant case have totally failed to do. To the contrary, the record establishes, without any doubt, the actual and legal interest of these members of the United Papermakers and Paperworkers, which is "the union" in a single labor agreement. A dispute with "the union" necessarily involves all employees covered by the contract. To permit a part of the Union to strike while the remainder were allowed to draw unemployment compensation would in effect result in the state and the taxpayers subsidizing the strike. We cannot attribute to the Legislature an intent to finance strikes out of unemployment compensation funds. By failing to report for work and honoring the picket line of their fellow union members, the claimants have in fact participated in the labor dispute and the work stoppage.

This matter was first considered by the administrative agency, which determined that the claimants were disqualified from benefits. A full hearing was had before the appeals tribunal, where claimants were represented by counsel. The Board of Review reviewed the claims on appeal and unanimously affirmed the action of the appeals tribunal in denying benefits. The District Court, in well-considered written reasons, concluded that the claimants were disqualified from receiving unemployment compensation because of their interest and participation in the labor dispute as did the Court of Appeal and the Supreme Court of Louisiana. All of these opinions clearly show that no federal question was ever raised, considered

or necessary to the decision of the instant litigation. The decision rests solely upon adequate non-federal grounds.

Conclusion

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

LOUISIANA CONSTITUTION

Article 7, Section 27:

"§ 27. **Trial on original record; rules of practice**

Section 27. All cases on appeal to the Courts of Appeal shall be tried on the original record, pleadings and evidence. The rules of practice regulating appeals to and proceedings in the Supreme Court shall apply to appeals and proceedings in the Courts of Appeal, so far as they may be applicable, until otherwise provided."

LOUISIANA REVISED STATUTES

La. Revised Statute 23:1601 (4):

"(4) For any week with respect to which the administrator finds that his unemployment is due to a labor dispute which is in active progress at the factory, establishment, or other premises at which he is, or was last employed; but such disqualification shall not apply if it is shown to the satisfaction of the administrator that he is not participating in or interested in the labor dispute which caused his unemployment. For the purposes of this Sub-section, if separate branches of work which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall be deemed to be a separate factory, establishment or other premises."